

Claimant initially alleged he was injured on October 23, 1997 but later orally amended this to allege an accident date of Thursday, October 24, 1997. On that date a truckload of 55-gallon and 30-gallon barrels of oil was delivered to respondent. Claimant was instructed to help unload it. Initially he worked by himself but after unloading about 10 or 15 barrels he had assistance. Claimant alleges he injured himself unloading the barrels of oil, but admits he did not notice any particular sensation of discomfort on the date of accident. He said he did not experience any twinge or other type of sensation of

pain other than his muscles aching from the extreme weight. He continued to perform his regular job duties but after about a week-and-a-half he started to experience a lot of pain and stiffness. Thereafter, he hurt a little more each day until he had such terrible pain that he could hardly move. Claimant contends he then decided to report his injury and, in fact, did report it to Ms. Terri Bina on November 11, 1997. He then went to his personal physician, Dr. James R. Larzalere, and told the doctor that he had been in pain since October 23.

Terri Bina is a service clerk for respondent. She testified that on November 11, 1997, claimant was working on a tractor when she happened by and claimant mentioned that his back hurt. She asked him what had happened and claimant said he didn't know. Later that day claimant said he thought he probably hurt his back when he unloaded the oil barrels. Ms. Bina also testified concerning an incident with claimant on Monday, November 3, 1997. She had just completed the monthly reports that showed claimant had a productive month. She took claimant his technician's summary and slapped him on the back and told him he did a good job. Claimant kind of drew back and she asked him what was wrong. Claimant replied that he had hurt his back riding his motorcycle that weekend. Although there was some indication that claimant may have been referring to his shoulder, Ms. Bina testified that claimant said he had hurt his back. Furthermore, claimant testified at the preliminary hearing that his prior shoulder injury had resolved long before his alleged work-related injury. Therefore, it must have been a new injury that caused him to draw back on November 3. Claimant attributed this new injury to riding his motorcycle. There was no mention of a work-related back injury.

Ms. Bina testified that in between the alleged accident date of October 24, 1997 and the date claimant first reported his back injury on November 11, 1997, claimant did not exhibit any physical problems other than the incident on November 3 when she slapped him on the back. Also, she did not notice claimant having any problems completing his job requirements. Claimant likewise testified that he continued to perform his regular job duties and did not seek medical treatment before November 11, 1997. Although claimant's testimony is somewhat contradictory as to when he experienced an onset of symptoms, it appears that he did not notice any unusual pain other than the normal muscle soreness until about a week-and-a-half after October 24, 1997. When asked whether the only reason he believed unloading the barrels caused his back injury was because that was the only thing he could think of that might have injured him, claimant answered "yes."

Claimant may have injured himself lifting barrels on October 24, 1997. It is also possible that he injured himself at work after that date, although claimant cannot recall any specific incident that precipitated his onset of symptoms. Nevertheless, it is claimant's burden to prove accidental injury arising out of and in the course of his employment by a preponderance of the credible evidence. The record fails to satisfy this burden.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the May 29, 1998 Order for Compensation and the June 4, 1998 Nunc Pro Tunc Order for Compensation should be, and are hereby, reversed. Preliminary hearing benefits are denied.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1998.

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BOARD MEMBER

c: David G. Shriver, McPherson, KS  
Gary A. Winfrey, Wichita, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director